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ABSTRACT

This report describes the racial impact of Illinois' practice of transferring young drug offenders to adult court. The state's Safe School Zone Act of 1986 and subsequent bills enacted by the legislature provide that youth age 15-16 years charged with drug sales within 1,000 feet of a school or public housing development are automatically prosecuted as adults. The vast majority of public housing is located in Cook County, where 74 percent of Illinois' African American juvenile population lives, and the close proximity of schools and housing projects creates a tight web of places within 1,000 feet of the safe zones. As a result, 99 percent of Cook County youth transferred to adult court for drug crimes are African American or Hispanic, though White youth in the state are just as likely, or more likely to sell and use illegal drugs. This analysis shows that Illinois' automatic transfer laws are depriving minority youth of the chances they could be afforded in the juvenile court system. It focuses on: (1) racial disparities and drug policy; (2) Illinois' automatic transfer law (legislative exclusion of nonviolent youth drug offenders from juvenile courts); (3) the impact of the automatic transfer law in Cook County; (4) the Chicago Reporter/WBEZ analysis of the situation; (5) Cook County Public Defender Juvenile Transfer Advocacy Unit data on the situation; (6) National Corrections Reporting Program data showing that 99 percent of new youth drug prison admissions in Illinois are non-White; and (7) the impact of adult incarceration on youth. (Contains 22 endnotes.) (SM)

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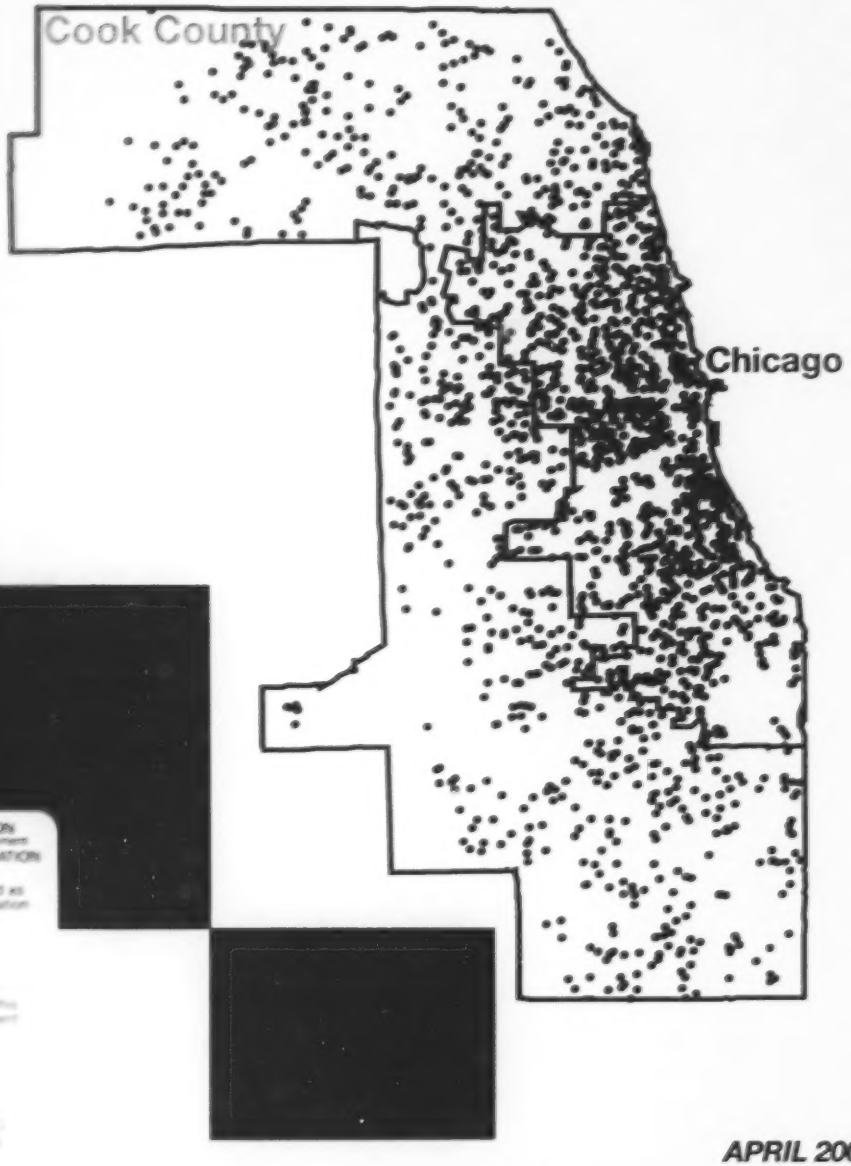
Building Blocks for Youth

For a fair and effective youth justice system

DRUGS AND DISPARITY

The Racial Impact of Illinois' Practice of Transferring Young Drug Offenders to Adult Court



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Building **Blocks** for Youth

DRUGS AND DISPARITY
The Racial Impact of Illinois' Practice of Transferring Young Drug Offenders to Adult Court[1]

The *Building Blocks for Youth* initiative has five major components:

(1) Research on the disparate impact of the justice system on minority youth, on the effects of new adult-court transfer legislation in the states, and on the privatization of juvenile justice facilities by for-profit corporations;

(2) Analyses of decisionmaking at critical points in the justice system, including arrest, detention, adjudication, and disposition;

(3) Direct advocacy on behalf of youth in the justice system, particularly on issues that disproportionately affect youth of color such as conditions of confinement in jails, prisons, and juvenile facilities; access to counsel and adequacy of representation in juvenile court; and "zero tolerance" and other issues relating to school suspensions and expulsions;

(4) Constituency-building among African-American, Latino, and Native-American and other minority organizations, as well as organizations in the medical, mental health, legal, law enforcement, child welfare, civil rights, human rights, religious, victim's rights, and domestic violence areas, at the national, state, and local levels;

(5) Development of communications strategies to provide timely, accurate, and relevant information to these constituencies, public officials, policymakers, the media, and the public.

The partners in the initiative are the Youth Law Center, American Bar Association Juvenile Justice Center, Center on Juvenile and Criminal Justice, Juvenile Law Center, Minorities in Law Enforcement, National Council on Crime and Delinquency and Pretrial Services Resource Center.

The initiative is supported in part by the Annie E. Casey, Ford, Mott, MacArthur, Rockefeller and William T. Grant foundations, and the Center on Crime, Communities & Culture of the Open Society Institute.

COVER PICTURE: Schools and public housing developments are more concentrated in Chicago than in suburban Cook County, making city teenagers more likely to be caught selling drugs within a 1,000-foot radius of those facilities, as depicted in the map on the cover. State law requires 15- and 16-year-olds arrested in these zones to be tried as adults.

Nationwide, illicit drug use is higher among white teenagers than African Americans or Latinos. But minority teenagers are more often arrested and charged with drug crimes. About one of three 15- and 16-year-olds in Illinois is a minority. But 95 percent of the youths before both juvenile and adult criminal court judges in Cook County in 1998 were African American or Latino.

Sources: U.S. Department of Housing and Urban Development: A Picture of Subsidized Households in 1998; school listings compiled by *The Chicago Reporter*. (Graphic by Desktop Edit Shop Inc.)

Sources: Household Survey on Drug Abuse: *Population Estimates for 1997*, Substance Abuse and Mental Health Services Administration; U.S. Census Bureau; Cook County Juvenile Court; the Clerk of the Circuit Court of Cook County.

Introduction

In the mid-1980s, Illinois embarked on an experiment in juvenile justice policy that was intended to reduce the sale and consumption of illegal drugs. By 1989, the legislature enacted two bills which provided that 15-or 16-year old youth charged with drug sales within 1,000 feet of a school or a public housing development would be automatically prosecuted as adults. As a result of these laws, 99% percent of the youth in Cook County transferred to adult court for drug crimes are African-American or Latino.

Though previous research has shown that minority youth bear the brunt of the nation's juvenile drug laws, the impact of Illinois' automatic transfer provisions qualify them as among the most racially inequitable laws in the country. Especially troubling is that this occurs despite evidence that White youth are using drugs at the same or higher rates than youth of color.

Ironically, a century ago, the first juvenile court in the world was founded in Cook County—a model forged in the philosophy that the primary goal of state intervention was to rehabilitate young offenders. The juvenile court in Chicago was embraced and emulated throughout the nation and the world. This analysis shows that Illinois' automatic transfer laws are robbing minority youth of the second chance they could be afforded in the juvenile court system.

Background: Racial Disparities and Drug Policy

The disparity in drug prosecutions in Illinois are part of a larger national context in which minority youth receive more severe treatment in the justice system than White youth. In January, 2000, *the Building Blocks for Youth* initiative issued its first report, *The Color of Justice*[2], which found that youth of color in California were more than eight times as likely to be incarcerated by adult courts as White youth for equally serious crimes.[3] *Building Blocks'* comprehensive national study, *And Justice for Some*, reported that youth of color are treated more severely than White youth at each stage of the justice system, even when charged with the same offenses.[4] In October, 2000, *Building Blocks'* third report, *Youth Crime / Adult Time*, an in-depth study of youth prosecuted as adults in 18 of the largest jurisdictions in the country, found racial disparities similar to the earlier reports, and raised serious concerns about the fairness and appropriateness of the process.[5] In the most recent reporting to the Office of Juvenile Justice and Delinquency Prevention of the U.S.

"If your child bought drugs, 'it was from a student of their own race generally'."
—General Barry McCaffrey, former head of the White House Office on Drug Control Policy[5]

Department of Justice, every state but one that reported data found disproportionate confinement of minority youth.[6] More than two-thirds of youths confined in America are young people of color, even though minorities make up only about one-third of America's youth population.

In a seminal meta-analysis conducted by researchers Carl Pope and Richard Feyerherm, two-thirds of the studies of state and local juvenile justice systems they analyzed found that there was a "race effect" at some stage of the juvenile justice process that affected outcomes for minorities for the worse.[7] Their research suggested that "the effects of race may be felt at various decision points, they may be direct or indirect, and they may accumulate as youth continue through the system."

Some of the greatest disparities involve youth prosecuted for drug offenses. *And Justice for Some* found:

- While half of all drug cases involving White youth nd youth of other races result in formal processing, three quarters of drug cases involving African-American youth result in formal processing.

- African-American youth represented 39% of drug cases petitioned for adult court, but 63% percent of actual cases sent to the adult system for processing and disposition. White youth were 59% of drug cases petitioned, but only 35% of the cases waived to adult court.

- The proportion of juvenile prison admissions involving a drug offense was three times greater among African-American youth than White youth.

- Of youth admitted to public facilities for the first time for a drug offense, the rate of admission for African-American youth was 48 times that of White youth. The Latino first time admission rate for drug offenses was 13 times the rate of Whites.

Youth Crime/Adult Time[8] found that:

- Drug cases were filed against African-American youth at five times the rate of White youth.

- A higher percentage of White (86%) youth charged with drug offenses were released pre-trial than African-American youth (67%).

How most youth are sent to adult court in Illinois[13]

Presumptive Transfer: When the prosecutor charges youth with certain felonies, there is a presumption that the youth will be prosecuted in adult criminal court. In such cases, **the youth must demonstrate in a hearing before a juvenile court judge that he or she *is amenable*** to the care, treatment and training programs available in the juvenile court.

Discretionary Transfer: The prosecutor files a petition to transfer a case to adult court. The youth remains in the juvenile court **unless the prosecution demonstrates in a hearing before a juvenile court judge that the youth *is not amenable*** to the treatment and programs available in the juvenile court.

Automatic Transfer or Exclusion: Illinois law mandates that any juvenile of a given age who commits certain offenses will be *automatically excluded* from the juvenile court and must be prosecuted in adult criminal court. Youth age 15 and 16 who are charged by prosecutors with delivery of a controlled substance or possession with the intent to deliver a controlled substance are automatically transferred to adult court. *In Cook County, over 90 percent of all juveniles sent to the adult criminal court got thereby automatic transfer.* Unlike other transfers, these cases originate in the adult criminal court.

Once Transferred, Always Transferred: If youth is tried and convicted in the adult court, all subsequent charges have to be in the adult court.

- For those convicted of drug offenses, African-American and Latino youth were more likely than White youth to receive a sentence of incarceration (versus a split sentence or probation).

Disparities in the treatment of minority youth under the nation's drug laws are not driven by differential rates of drug use: White youth are just as likely, or more likely, to be consumers and sellers of illegal drugs. The 1999 National Household Survey on Drug Abuse reports that White youth aged 12-17 are more than a third more likely to have sold drugs than African-American youth.[9] A number of different surveys have shown that most drug sales in America are intra-racial—that is, people tend to buy from sellers of the same race.[10] The National Institute on Drug Abuse's survey of high school seniors from 1998/1999 shows that White students use cocaine at 7 times the rate of African-Americans students, use crack cocaine at 8 times the rate of African-Americans students, and use heroin at 7 times the rate of African-Americans students.[11] The same survey showed that nearly identical percentages of White and African-American seniors use marijuana.

Nevertheless, minority youth, particularly African-American youth, overwhelmingly bear the weight of policies designed to arrest, detain, try and imprison young people as adults for drug offenses.

Illinois Automatic Transfer Law: Legislative Exclusion of Non-Violent Youth Drug Offenders

Under Illinois law, a prosecutor may move a juvenile case into the adult court by petitioning the court for a transfer hearing (discretionary) or by charging a juvenile with key felonies to trigger a transfer hearing (presumptive). In both cases, a judge ultimately decides whether the youth's case should proceed in juvenile court or the adult system. The prosecutor's power to petition for transfer is among the broadest in the nation: prosecutors can petition the juvenile court to transfer any youth, 13 or older, charged with any felony. But under Illinois law, the legislature may also mandate than any juvenile of a certain age who commits a particular offense will be *automatically excluded* (automatic transfer or exclusion) from the juvenile court and must be prosecuted in adult criminal court. Once convicted, a transferred youth will remain transferred if he or she is tried on a subsequent offense: forevermore, they will be treated as an adult in the eyes of the court.

Starting in 1985, a series of laws enacted by the Illinois legislature radically altered the way in which youth charged with drug offenses would be handled by the state courts, by adding drug offenses to the state's automatic transfer law. The Safe School Zone Act was enacted in 1985, requiring that 15-and 16-year-olds charged with delivery of a controlled substance within 1,000 feet of a school be tried in adult court. In 1987, lawmakers melded the school zone law with the Juvenile Court Act, in effect making the delivery of a controlled substance near a school an "aggravating" factor. Thus the drug offense was considered a higher level crime because it was committed within the school "safe zone." In 1989, the legislature voted to apply the "safe zones" to public housing developments as well.[14]

The Impact of the Automatic Transfer Law: 99% of Cook County Youth Transferred Are African-American or Latino

In 1999, African-Americans made up 15% of the youth population in Illinois; 64% of Illinois youth were White. But African-American youth represented 50% of the youth arrested that year, 55.2 % of youth in detention, and 85.5 % of the youth automatically transferred by the state to adult court. African-Americans make up 59% of all youth arrested for drug crimes.

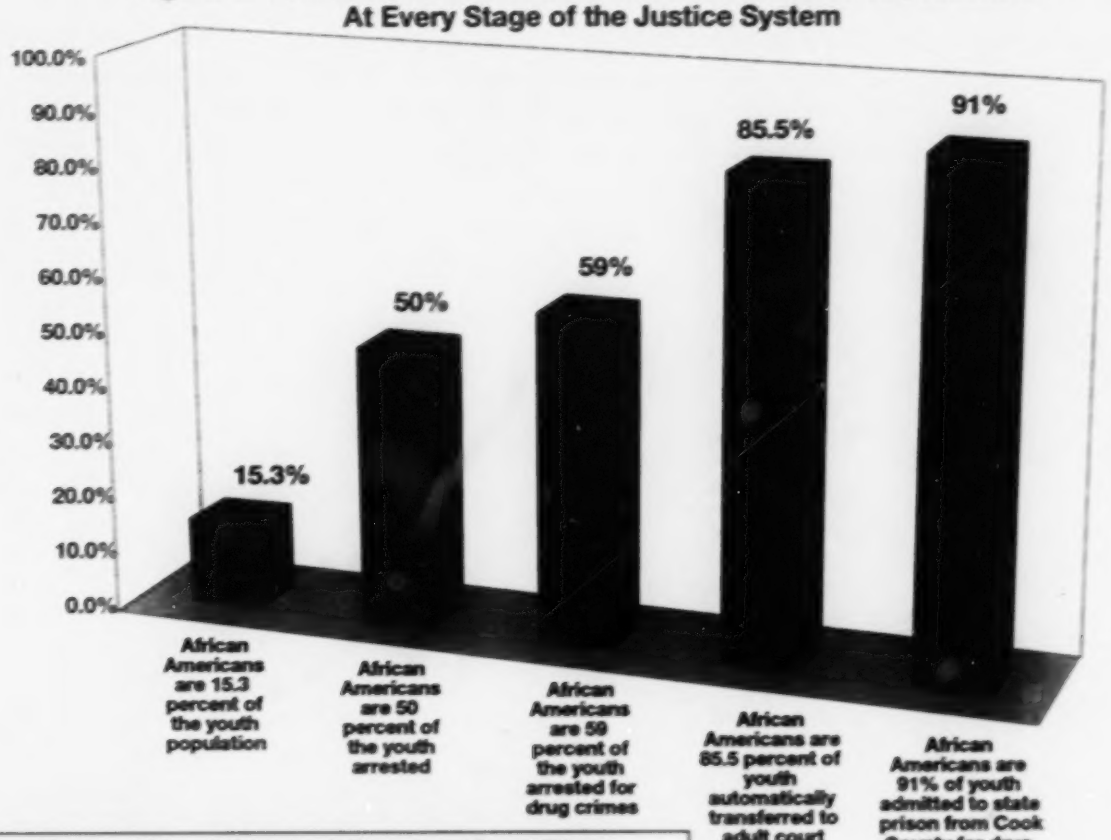
Ninety-two ppercent of all the youth automatically transferred to adult court in Illinois were in Cook County, and 88.2% of Illinois counties did not automatically exclude any youth from the juvenile court. —Source: The Status of Juvenile Detention in Illinois, Annual Report, 1998 (2000)

even though national data suggests that White youth in the state would use and sell drugs at the same or a higher rate than minority youth.

While the automatic transfer laws apply statewide, it is the impact of these laws in Cook County that is generating racial disparity in Illinois drug prosecutions.

Almost three-quarters of Illinois' African-American juvenile population (74%) lives in Cook County. The vast majority of public housing in the state is located in Cook County, and the close proximity of schools and housing projects in the city creates a tighter web of places where one could possibly be within 1,000 feet of the "safe zones." Between 1985 and 1999, the

Figure 1: In Illinois, African-American Youth Are Over-Represented At Every Stage of the Justice System



Source: *The Status of Juvenile Detentions in Illinois, Annual Report* Chicago: National Juvenile Detention Association, June, 2000; *Juvenile Crime and Justice-System Activities in Illinois: An Overview of Trends.* Chicago: Illinois Criminal Justice Information Authority, June 2000; U.S. Department of Justice, Bureau of Justice Statistics. *National Corrections Reporting Program, 1996.* (1998) ICPSR, e. Ann Arbor, MI. Inter-University Consortium for Political and Social Research, 1999. (1999).

number of juveniles arrested for drug offenses in Illinois tripled, and by 1999, 61% percent of all juvenile drug arrests in the state occurred in Chicago.

Whatever the intent of Illinois' automatic transfer laws, the impact of the laws was dramatic, and racial disparities quickly became evident. A lawsuit challenging the transfer law filed in 1993 by the Chicago chapter of the Lawyers Committee for Civil Rights stated that, of the juveniles automatically transferred for drug crimes within 1,000 feet of public housing in Illinois in 1992, *all were African-American.*[15]

The Chicago Reporter/WBEZ Analysis

In May, 2000, *The Chicago Reporter* and Chicago's National Public Radio affiliate, WBEZ, published an analysis of the records of all juveniles charged with selling drugs within 1,000 feet of a school or housing project from 1995 to 1999.[16] Of the 363 youth drug offenders charged in Cook County as adults, 344 (or 95% of the total) were African-American youth. Adding the 16 Latino youth charged for drug offenses, *fully 99.2% of the youth prosecuted as adults for drug offenses in Cook County were minority youth.* Ninety-seven percent of the youth tried in adult court for drug crimes lived in the city of Chicago.

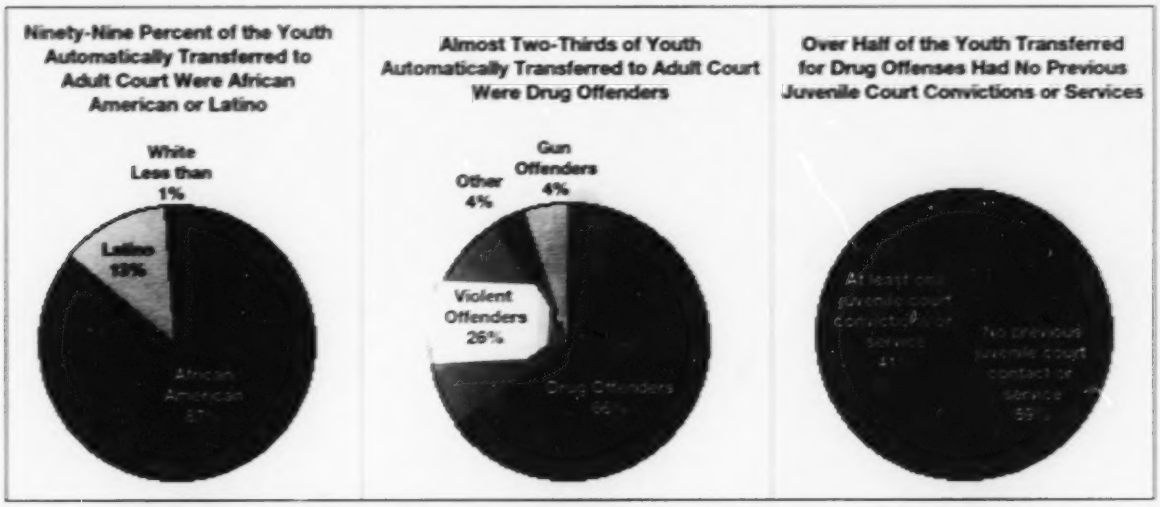
Of the 363 cases, only half were found guilty, and more than a quarter of the charges were dropped. Of the 179 guilty convictions, 117 (65%) were sentenced to some form of adult probation, 10 were sent to boot camps or home confinement (one was sentenced to public service) and only 52 (14%) were remanded to the Illinois Department of Corrections. The fact that more than 85% of these youth were acquitted, or had their charges dropped, or were sent to some alternative program to the Department of Corrections, raises critical questions about the seriousness of the charges.

It is ironic that for the many youth placed on adult probation – nearly two-thirds of those convicted – they will receive less supervision and fewer rehabilitative services while on the overburdened adult probation caseloads than they would have under supervision in juvenile court. Further, these non-violent drug offender youth are now saddled with an adult felony conviction that will follow them for the rest of their lives—and that may act as a roadblock to their education and employment.

Cook County Public Defender Juvenile Transfer Advocacy Unit Data[17]

The Juvenile Transfer Advocacy Unit of the Cook County Public Defender's office

Figure 2: Cook County Automatic Transfers


Ninety-Nine Percent of the Youth Automatically Transferred to Adult Court Were African American or Latino
White Less than 1%
Latino 13%
African American
Almost Two-Thirds of Youth Automatically Transferred to Adult Court Were Drug Offenders
Other 4%
Gun Offenders 4%
Violent Offenders 26%
Drug Offenders
Over Half of the Youth Transferred for Drug Offenses Had No Previous Juvenile Court Convictions or Services

Source: Law Office of the Cook County Public Defender, Juvenile Transfer Advocacy Unit, October, 1999 through September, 2000.
Made possible by funds from the U.S. Department of Justice, Byrne Formula Grant Program.

studied the records of all the youth who were automatically transferred to the adult court from October, 1999 to October, 2000. Preliminary results show that of the 393 youth automatically transferred in Cook County for a wide range of offenses, *99.2% were minority youth. Only 3 of 393 youth transferred were White: 340 were African-American, and 50 were Latino.*

Of the 393 youth transferred from Cook County, 66% (259) were tried as adults for a drug offense, and only 26% of were charged with a violent offense. *More than 99% of the drug offenders transferred to adult court were African-American or Latino.* (Only 1 of 259 youth were Caucasian) Only two of the juveniles who were arrested, detained and charged as adults for distribution of a controlled substance were from the suburbs—the remaining 99% of the transferred drug offenders were from Chicago.

Many of the youth transferred for drug crimes had no previous conviction with the juvenile court, or had never received any form of juvenile court services. Over-one third of the juvenile drug transfer cases (34%) had no previous referral to the juvenile court, and over half (59%) had never received juvenile court services. Only 5% of all the youth transferred in the sample had a prior conviction in the adult court before this automatic transfer offense.

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Since so many of the cases sampled by the Public Defender's office are still winding their way through the court system, the final disposition of all 259 youth drug offense cases in the JTAU sample will not be known for some time. But the preliminary data confirms questions about the seriousness of and validity of the charges. As of December 15, 2000, the Public Defender study shows that 95 cases (37%) were not prosecuted for reasons ranging from a lack of evidence to the inability of the state to make the case that the offense happened within 1,000 feet of a school. Of the cases that were sentenced as of December, 74% got adult probation, and only 9% were sentenced to the Department of Corrections. The data from the public defenders' office is remarkably consistent with the Chicago Report/WBEZ analysis. With such a higher number of cases dismissed or sentenced to community-based sanctions, both data sets call into question the seriousness of the charges against these youth to begin with.

National Corrections Reporting Program Shows that 99% of New Youth Drug Prison Admissions in Illinois are Non-White

While it will be some time before we know what happened to all the youth drug offenders in the public defender office sample, the National Corrections Reporting Program, which tabulates extensive demographic, racial and age data for people admitted to state prison for 1986 and 1996, gives some indication of how the disparities in arrests and prosecutions follow youth charged with drug offenses.

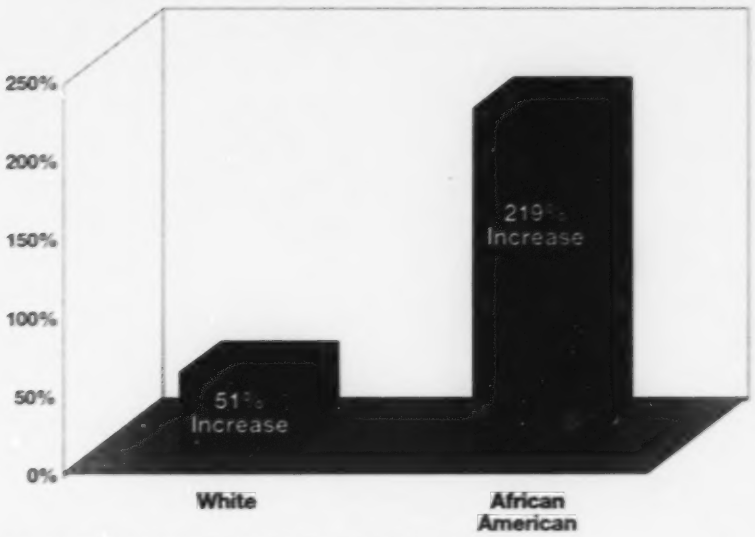
In 1986, just as the Safe School Zone Act was going into effect, ***none*** of the 194 youth admitted to state prison in Illinois were charged with drug offenses. Of the 194 youth sent to adult prison that year, 77 (39.7%) were White, 100 (51.5%) were Black, and 17 (8.8%) the race of the youth was not known. About half of the youth admitted to prison that year (48.5%) came from Cook County.

A decade later, when the next NCRP reported comprehensive prisoner demographics for Illinois, the full impact of the state's transfer laws could be felt.

By 1996, there were 501 youth admitted to state prison in Illinois. Of those 116 (23.2%) were White, 319 (63.7%) were African-American, and for 64 (12.8%) the race of the youth was not known. This means that, over a decade, the number of youth entering prison each year more than doubled. Between 1986 and 1996, the number of White youth entering Illinois prisons increased by 51%, while the number of African-American youth

21,000 college applicants may lose the opportunity for federal aid during the 2001-2002 school year after revealing a drug conviction. More than 8,000 applicants lost some or all of their aid for revealing a drug conviction in school year 2000-2001.

Figure 3: The number of white youth entering Illinois prisons increased by half while the number of Black youth entering Illinois prisons more than tripled



Source: National Corrections Reporting Program, 1996;1986.

entering Illinois prisons more than tripled (219% increase) . More than 77% of the growth in youth entering prison in Illinois were non-White youth during that time period. *African-American youth, alone, made up 70% of the growth in new admissions.* Of the 501 Illinois youth admitted to state prison, 302 (60.3%) came from Cook County. No other county had more than 17 youth admitted to state prison.

In 1996, 124 youth admitted to state prison were convicted of a drug offense as their most serious charge. These youth were approximately 25% of all youth in Illinois admitted to state prison. Of the 124, 100 (80.6%) came from Cook County. No other county had more than 4 youth admitted to state prison for drug offenses.

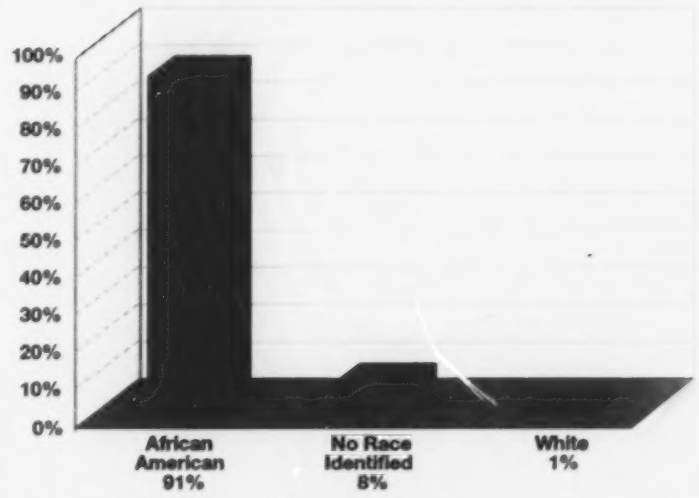
Of the 100 youth tried as adults and sent to prison from Cook County for drug crimes, 99% were non-White. One new admission was White, 91 were African-American, 8 did not have their race identified. Of the 24 youth drug offenders admitted to prison from counties other than Cook, 6 were White (25%), and 18 (75%) were African-American.

Discussion and Conclusion: The Impact of Adult Incarceration on Youth

When Illinois youth are convicted in the adult criminal court, they are sent to youth centers run by the Illinois Department of Corrections. These facilities generally house youth between the ages of 13 and 21, although the bulk of residents are between the ages of 13 and 17. The facilities do not segregate the younger inmates from the older inmates. Upon their 17th birthday, youth who have been tried as adults can be transferred to the adult prison system, and on their 18th birthday, they are automatically sent to adult prison.

Studies have shown that young inmates face enormous risks when they enter the adult prison system. One study has shown that youths are five times as likely to be a victim of sexual assault in prison compared to a juvenile facility. Youth in adult prison are also twice as likely to be beaten by staff and 50% more likely to be attacked with a weapon, compared to youth in juvenile facilities.[18] A study done for the U.S. Department of Justice in 1981 reported that the suicide rate of juveniles in adult jails is 7.7 times as high as the rate for youth in juvenile detention centers.[19] There is similar research in Canada, Australia, and the United Kingdom. One researcher concluded that youth represent the prototypical prison rape victim: someone young, if not the youngest inmate within a given institutional system.[20]

Figure 4: Of the 100 youth sent to prison for drug crimes from Cook County, 99% were non-White



Source: National Corrections Reporting Program, 1996

Whether they are sentenced to probation or sent to prison, these youth will be saddled for the rest of their lives with a felony drug conviction that may operate as an economic and educational roadblock throughout their lives. To cite one example, amendments to the Higher Education Act in 1999 required people applying for federal student loans to report whether they have had a drug felony conviction in their lifetime. According to the Department of Education, 21,000 applicants may lose the opportunity for federal aid for the 2001-2002 school year after revealing a drug conviction, and over 8,000 lost some of all of their aid in school year 2000-2001.[21]

Nationally, two-thirds of all new prison admissions are probation or parole violators, and currently, more people fail on probation than succeed.[22] American corrections officials are struggling to find new services and mechanisms to ease prisoner re-entry and stop the cycle of returning parole failures. The apparent leniency of a non-incarceration disposition

may belie the fact many youth will be imprisoned due to failures in the probation system.

While questions remain, it is clear that the enormous impact of prosecution, imprisonment and collateral consequences for young drug offenders is not borne equitably by youth of different races and ethnicities. Illinois' 16-year experiment with automatic transfer for drug offenses does not affect suburban or rural White youth in a way even remotely comparable to urban minority youth. Instead, Cook County's African-American and Latino youth populations are virtually singled out for arrest, detention and punishment for drug sales, even though data show that White youth in the state are just as likely, if not more likely, to sell and use illegal drugs. In Illinois, the scales of justice —as measured by the way punishment is dolled out—are weighted heavily against youth of color.

ENDNOTES

1 The primary author of this report was Jason Ziedenberg, Senior Policy Analyst of the Justice Policy Institute, for the Building Blocks for Youth Initiative. The Cook County Public Defender's Office data was produced by Elizabeth Kooy of the Juvenile Transfer Advocacy Unit. Phillip Beatty is a doctorial student with the Sociology Department at American University, and provided the National Correction Reporting Program data analysis. Substantial editorial assistance was provided by Vincent Schiraldi of the Justice Policy Institute, Mark Soler for the Building Blocks for Youth Intiative, Gregory Caldwell of the University of California at Berkeley and Norma Navoron of the University of California in Los Angeles.

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